

## SUBCHAPTER A—GENERAL

### PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

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#### Subpart A—Filing Rules

##### § 4000.1 What are these filing rules about?

Where a particular regulation calls for their application, the rules in this subpart A of part 4000 tell you what filing methods you may use for any submission (including a payment) to us. They do not cover an issuance from you to anyone other than the PBGC, such as a notice to participants. Also, they do not cover filings with us that are not made under our regulations, such as procurement filings, litigation filings, and applications for employment with us. (Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

##### § 4000.2 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

*Filing* means any notice, information, or payment that you submit to us under our regulations.

*Issuance* means any notice or other information you provide to any person other than us under our regulations.

*We* means the PBGC.

*You* means the person filing with us.

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### § 4000.3 What methods of filing may I use?

(a) *Paper filings.* Except for the filings listed in paragraph (b) of this section, you may file any submission with us by hand, mail, or commercial delivery service.

(b) *Electronic filings.* (1) You must file premium declarations under part 4007 of this chapter electronically in accordance with the instructions on the PBGC's Web site subject to the following provisions:

(i) This electronic filing requirement applies to filings for plan years beginning in 2006 that are made on or after July 1, 2006, for plans with 500 or more participants for the prior plan year and to filings for all plans for plan years beginning after 2006.

(ii) This electronic filing requirement does not apply to premium information to the extent that the PBGC grants an exemption for good cause in appropriate circumstances.

(iii) This electronic filing requirement does not apply to premium payments except to the extent that the PBGC so provides in the instructions on the PBGC's Web site.

(iv) This electronic filing requirement does not apply to information you file to comply with a request we make under § 4007.10(c) of this chapter (dealing with providing record information in connection with a premium compliance review).

(2) You must submit the information required under part 4010 of this chapter electronically in accordance with the instructions on the PBGC's Web site, except as otherwise provided by the PBGC.

(c) *Information on how to file.* Current information on how to file, including permitted filing methods, fax numbers, and mail and e-mail addresses, is—

(1) On our Web site, <http://www.pbgc.gov>;

(2) In our various printed forms and instructions packages; and

(3) Available by contacting our Customer Service Center at 1200 K Street, NW., Washington, DC, 20005–4026; telephone 1–800–400–7242 (for participants), or 1–800–736–2444 (for practitioners). (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339

and ask to be connected to the appropriate number.)

[70 FR 11543, Mar. 9, 2005, as amended at 71 FR 31080, June 1, 2006]

### § 4000.4 Where do I file my submission?

To find out where to send your submission, visit our Web site at <http://www.pbgc.gov>, see the instructions to our forms, or call our Customer Service Center (1–800–400–7242 for participants, or 1–800–736–2444 for practitioners; TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to the appropriate number.) Because we have different addresses for different types of filings, you should make sure to use the appropriate address for your type of filing. For example, some filings (such as premium payments) must be sent to a specified bank, while other filings (such as the Standard Termination Notice (Form 500)) must be sent to the appropriate department at our offices in Washington, DC. You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

[68 FR 61347, Oct. 28, 2003, as amended at 70 FR 11543, Mar. 9, 2005]

### § 4000.5 Does the PBGC have discretion to waive these filing requirements?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

## Subpart B—Issuance Rules

### § 4000.11 What are these issuance rules about?

Where a particular regulation calls for their application, the rules in this subpart B of part 4000 tell you what methods you may use to issue a notice or otherwise provide information to any person other than us (e.g., a participant or beneficiary). They do *not* cover payments to third parties. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the

PBGC's own regulations (e.g., requirements under the Internal Revenue Code). If so, you must comply with any applicable issuance rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

**§ 4000.12 What definitions do I need to know for these rules?**

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

*Filing* means any notice, information, or payment that you submit to us under our regulations.

*Issuance* means any notice or other information you provide to any person other than us under our regulations.

*We* means the PBGC.

*You* means the person providing the issuance to a third party.

**§ 4000.13 What methods of issuance may I use?**

(a) *In general.* You may use any method of issuance, provided you use measures reasonably calculated to ensure actual receipt of the material by the intended recipient. Posting is not a permissible method of issuance under the rules of this part.

(b) *Electronic safe-harbor method.* Section 4000.14 provides a safe-harbor method for meeting the requirements of paragraph (a) of this section when providing an issuance using electronic media.

**§ 4000.14 What is the safe-harbor method for providing an issuance by electronic media?**

(a) *In general.* Except as otherwise provided by applicable law, rule or regulation, you satisfy the requirements of § 4000.13 if you follow the methods described at paragraph (b) of this section when providing an issuance by electronic media to any person described in paragraph (c) or (d) of this section.

(b) *Issuance requirements.* (1) You must take appropriate and necessary

measures reasonably calculated to ensure that the system for furnishing documents—

(i) Results in actual receipt of transmitted information (e.g., using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information); and

(ii) Protects confidential information relating to the intended recipient (e.g., incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by anyone other than the intended recipient);

(2) You prepare and furnish electronically delivered documents in a manner that is consistent with the style, format and content requirements applicable to the particular document;

(3) You provide each intended recipient with a notice, in electronic or non-electronic form, at the time a document is furnished electronically, that apprises the intended recipient of—

(i) The significance of the document when it is not otherwise reasonably evident as transmitted (e.g., “The attached participant notice contains information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation.”); and

(ii) The intended recipient's right to request and obtain a paper version of such document; and

(4) You give the intended recipient, upon request, a paper version of the electronically furnished documents.

(c) *Employees with electronic access.* This section applies to a participant who—

(1) Has the ability to effectively access the document furnished in electronic form at any location where the participant is reasonably expected to perform duties as an employee; and

(2) With respect to whom access to the employer's electronic information system is an integral part of those duties.

(d) *Any person.* This section applies to any person who—

(1) Except as provided in paragraph (d)(2) of this section, has affirmatively consented, in electronic or non-electronic form, to receiving documents

through electronic media and has not withdrawn such consent;

(2) In the case of documents to be furnished through the Internet or other electronic communication network, has affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the person's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(3) Prior to consenting, is provided, in electronic or non-electronic form, a clear and conspicuous statement indicating:

(i) The types of documents to which the consent would apply;

(ii) That consent can be withdrawn at any time without charge;

(iii) The procedures for withdrawing consent and for updating the participant's, beneficiary's or other person's address for receipt of electronically furnished documents or other information;

(iv) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge;

(v) Any hardware and software requirements for accessing and retaining the documents; and

(4) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the person will be unable to access or retain electronically furnished documents,

(i) Is provided with a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents;

(ii) Is given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and

(iii) Again consents, in accordance with the requirements of paragraph (d)(1) or paragraph (d)(2) of this section, as applicable, to the receipt of documents through electronic media.

**§ 4000.15 Does the PBGC have discretion to waive these issuance requirements?**

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

**Subpart C—Determining Filing and Issuance Dates**

**§ 4000.21 What are these rules for determining the filing or issuance date about?**

Where the particular regulation calls for their application, the rules in this subpart C of part 4000 tell you how we will determine the date you send us a filing and the date you provide an issuance to someone other than us (such as a participant). These rules do *not* cover payments to third parties. In addition, they do not cover filings with us that are not made under our regulations, such as procurement filings, litigation filings, and applications for employment with us. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (e.g., requirements under the Internal Revenue Code (Title 26, USC)). In meeting those requirements, you should follow any applicable rules under those requirements for determining the filing and issuance date. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

**§ 4000.22 What definitions do I need to know for these rules?**

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

*Business day* means a day other than a Saturday, Sunday, or Federal holiday. *We* means the PBGC.

*You* means the person filing with us or the person providing the issuance to a third party.

**§ 4000.23 When is my submission or issuance treated as filed or issued?**

(a) *Filed or issued when sent.* Generally, we treat your submission as filed, or your issuance as provided, on the date you send it, if you meet certain requirements. The requirements depend upon the method you use to send your submission or issuance (see §§ 4000.24 through 4000.29). (Certain filings are always treated as filed when received, as explained in paragraph (b)(2) of this section.) A submission made through our Web site is considered to have been sent when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

(b) *Filed or issued when received.*—(1) *In general.* If you do not meet the requirements for your submission or issuance to be treated as filed or issued when sent (see §§ 4000.24 through 4000.32), we treat it as filed or issued on the date received in a permitted format at the proper address.

(2) *Certain filings always treated as filed when received.* We treat the following submissions as filed on the date we receive your submission, no matter what method you use:

(i) *Applications for benefits.* An application for benefits or related submission (unless the instructions for the applicable forms provide for an earlier date);

(ii) *Advance notice of reportable events.* Information required under subpart C of part 4043 of this chapter, dealing with advance notice of reportable events;

(iii) *Form 200 filings.* Information required under subpart D of part 4043 of this chapter, dealing with notice of certain missed minimum funding contributions; and

(iv) *Requests for approval of multiemployer plan amendments.* A request for approval of an amendment filed with the PBGC pursuant to part 4220 of this chapter.

(3) *Determining our receipt date for your filing.* If we receive your submission at the correct address by 5 p.m. (our time) on a business day, we treat it as received on that date. If we receive your submission at the correct address after 5 p.m. on a business day, or anytime on a weekend or Federal

holiday, we treat it as received on the next business day. For example, if you send your fax or e-mail of a Form 200 filing to us in Washington, DC, on Friday, March 15, from California at 3 p.m. (Pacific standard time), and we receive it immediately at 6 p.m. (our time), we treat it as received on Monday, March 18. A submission made through our Web site is considered to have been received when we receive an electronic signal that you have performed the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

[68 FR 61347, Oct. 28, 2003, as amended at 70 FR 11543, Mar. 9, 2005]

**§ 4000.24 What if I mail my submission or issuance using the U.S. Postal Service?**

(a) *In general.* Your filing or issuance date is the date you mail your submission or issuance using the U.S. Postal Service if you meet the requirements of paragraph (b) of this section, and you mail it by the last scheduled collection of the day. If you mail it later than that, or if there is no scheduled collection that day, your filing or issuance date is the date of the next scheduled collection. If you do not meet the requirements of paragraph (b), your filing or issuance date is the date of receipt at the proper address.

(b) *Requirements for “send date.”* Your submission or issuance must meet the applicable postal requirements, be properly addressed, and you must use First-Class Mail (or a U.S. Postal Service mail class that is at least the equivalent of First-Class Mail, such as Priority Mail or Express Mail). However, if you are filing an advance notice of reportable event or a Form 200 (notice of certain missed contributions), see § 4000.23(b); these filings are always treated as filed when received.

(c) *Presumptions.* We make the following presumptions—

(1) *U.S. Postal Service postmark.* If you meet the requirements of paragraph (b) of this section and your submission or issuance has a legible U.S. Postal Service postmark, we presume that the postmark date is the filing or issuance date. However, you may prove an earlier date under paragraph (a) of this section.

(2) *Private meter postmark.* If you meet the requirements of paragraph (b) of this section and your submission or issuance has a legible postmark made by a private postage meter (but no legible U.S. Postal Service postmark) and arrives at the proper address by the time reasonably expected, we presume that the metered postmark date is your filing or issuance date. However, you may prove an earlier date under paragraph (a) of this section.

(d) *Examples.* (1) You mail your issuance using the U.S. Postal Service and meet the requirements of paragraph (b) of this section. You deposit your issuance in a mailbox at 4 p.m. on Friday, March 15 and the next scheduled collection at that mailbox is 5 p.m. that day. Your issuance date is March 15. If on the other hand you deposit it at 6 p.m. and the next collection at that mailbox is not until Monday, March 18, your issuance date is March 18.

(2) You mail your submission using the U.S. Postal Service and meet the requirements of paragraph (b) of this section. You deposit your submission in the mailbox at 4 p.m. on Friday, March 15, and the next scheduled collection at that mailbox is 5 p.m. that day. If your submission does not show a March 15 postmark, then you may prove to us that you mailed your submission by the last scheduled collection on March 15.

**§ 4000.25 What if I use the postal service of a foreign country?**

If you send your submission or issuance using the postal service of a foreign country, your filing or issuance date is the date of receipt at the proper address.

**§ 4000.26 What if I use a commercial delivery service?**

(a) *In general.* Your filing or issuance date is the date you deposit your submission or issuance with the commercial delivery service if you meet the requirements of paragraph (b) of this section, and you deposit it by the last scheduled collection of the day for the type of delivery you use (such as two-day delivery or overnight delivery). If you deposit it later than that, or if there is no scheduled collection that

day, your filing or issuance date is the date of the next scheduled collection. If you do not meet the requirements of paragraph (b), your filing or issuance date is the date of receipt at the proper address. However, if you are filing an advance notice of reportable event or a Form 200 (notice of certain missed contributions), see § 4000.23(b); these filings are always treated as filed when received.

(b) *Requirements for “send date.”* Your submission or issuance must meet the applicable requirements of the commercial delivery service, be properly addressed, and—

(1) *Delivery within two days.* It must be reasonable to expect your submission or issuance will arrive at the proper address by 5 p.m. on the second business day after the next scheduled collection; or

(2) *Designated delivery service.* You must use a “designated delivery service” under section 7502(f) of the Internal Revenue Code (Title 26, USC). Our Web site, <http://www.pbtc.gov>, lists those designated delivery services. You should make sure that both the provider and the particular type of delivery (such as two-day delivery) are designated.

(c) *Example.* You send your submission by commercial delivery service using two-day delivery. In addition, you meet the requirements of paragraph (b) of this section. Suppose that the deadline for two-day delivery at the place you make your deposit is 8 p.m. on Friday, March 15. If you deposit your submission by that the deadline, your filing date is March 15. If, instead, you deposit it after the 8 p.m. deadline and the next collection at that site for two-day delivery is on Monday, March 18, your filing date is March 18.

**§ 4000.27 What if I hand deliver my submission or issuance?**

Your filing or issuance date is the date of receipt of your hand-delivered submission or issuance at the proper address. A hand-delivered issuance need not be delivered while the intended recipient is physically present. For example, unless you have reason to believe that the intended recipient will

not receive the notice within a reasonable amount of time, a notice is deemed to be received when you place it in the intended recipient's office mailbox. Our Web site, <http://www.pbgc.gov>, and the instructions to our forms, identify the proper addresses for filings with us.

#### § 4000.28 What if I send a computer disk?

(a) *In general.* We determine your filing or issuance date for a computer disk as if you had sent a paper version of your submission or issuances if you meet the requirements of paragraph (b) of this section.

(1) *Filings.* For computer-disk filings, we may treat your submission as invalid if you fail to meet the requirements of paragraph (b)(1) or (b)(3) of this section.

(2) *Issuances.* For computer-disk issuances, we may treat your issuance as invalid if—

(i) You fail to meet the requirements (“using measures reasonably calculated to ensure actual receipt”) of § 4000.13(a), or

(ii) You fail to meet the contact information requirements of paragraph (b)(3) of this section.

(b) *Requirements.* To get the filing date under paragraph (a) of this section, you must meet the requirements of paragraphs (b)(1) and (b)(3). To get the issuance date under paragraph (a), you must meet the requirements of paragraphs (b)(2) and (b)(3).

(1) *Technical requirements for filings.* For filings, your electronic disk must comply with any technical requirements for that type of submission (our Web site, <http://www.pbgc.gov>, identifies the technical requirements for each type of filing).

(2) *Technical requirements for issuances.* For issuances, you must comply with the safe-harbor method under § 4000.14.

(3) *Identify contact person.* For filings and issuances, you must include, in a paper cover letter or on the disk's label, the name and telephone number of the person to contact if we or the intended recipient is unable to read the disk.

#### § 4000.29 What if I use electronic delivery?

(a) *In general.* Your filing or issuance date is the date you electronically transmit your submission or issuance to the proper address if you meet the requirements of paragraph (b) of this section. Note that we always treat an advance notice of reportable event and a Form 200 (notice of certain missed contributions) as filed when received. A submission made through our Web site is considered to have been transmitted when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn. You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

(1) *Filings.* For electronic filings, if you fail to meet the requirements of paragraph (b)(1) or (b)(3) of this section, we may treat your submission as invalid.

(2) *Issuances.* For electronic issuances, we may treat your issuance as invalid if—

(i) You fail to meet the requirements (“using measures reasonably calculated to ensure actual receipt”) of § 4000.13(a), or

(ii) You fail to meet the contact information requirements of paragraph (b)(3) of this section.

(b) *Requirements.* To get the filing date under paragraph (a) of this section, you must meet the requirements of paragraphs (b)(1) and (b)(3). To get the issuance date under paragraph (a), you must meet the requirement of paragraphs (b)(2) and (b)(3).

(1) *Technical requirements for filings.* For filings, your electronic submission must comply with any technical requirements for that type of submission (our Web site, <http://www.pbgc.gov>, identifies the technical requirements for each type of filing).

(2) *Technical requirements for issuances.* For issuances, you must comply with the safe-harbor method under § 4000.14.

(3) *Identify contact person.* For an e-mail submission or issuance with an attachment, you must include, in the body of your e-mail, the name and telephone number of the person to contact

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if we or the intended recipient needs you to resubmit your filing or issuance.

(c) *Failure to meet address requirement.* If you send your electronic submission or issuance to the wrong address (but you meet the requirements of paragraph (b) of this section), your filing or issuance date is the date of receipt at the proper address.

[68 FR 61347, Oct. 28, 2003, as amended at 70 FR 11544, Mar. 9, 2005]

### § 4000.30 What if I need to resend my filing or issuance for technical reasons?

(a) *Request to resubmit*—(1) *Filing.* We may ask you to resubmit all or a portion of your filing for technical reasons (for example, because we are unable to open an attachment to your e-mail). In that case, your submission (or portion) is invalid. However, if you comply with the request or otherwise resolve the problem (e.g., by providing advice that allows us to open the attachment to your e-mail) by the date we specify, your filing date for the submission (or portion) that we asked you to resubmit is the date you filed your original submission. If you comply with our request late, your submission (or portion) will be treated as filed on the date of your resubmission.

(2) *Issuance.* The intended recipient may, for good reason (of a technical nature), ask you to resend all or a portion of your issuance (for example, because of a technical problem in opening an attachment to your e-mail). In that case, your issuance (or portion) is invalid. However, if you comply with the request or otherwise resolve the problem (e.g., by providing advice that the recipient uses to open the attachment to your e-mail), within a reasonable time, your issuance date for the issuance (or portion) that the intended recipient asked you to resend is the date you provided your original issuance. If you comply with the request late, your issuance (or portion) will be treated as provided on the date of your reissuance.

(b) *Reason to believe submission or issuance not received or defective.* If you have reason to believe that we have not received your submission (or have received it in a form that is not useable),

or that the intended recipient has not received your issuance (or has received it in a form that is not useable), you must promptly resend your submission or issuance to get your original filing or issuance date. However, we may require evidence to support your original filing or issuance date. If you are not prompt, or you do not provide us with any evidence we may require to support your original filing or issuance date, your filing or issuance date is the filing or issuance date of your resubmission or reissuance.

### § 4000.31 Is my issuance untimely if I miss a few participants or beneficiaries?

The PBGC will not treat your issuance as untimely based on your failure to provide the issuance to a participant or beneficiary in a timely manner if—

(a) The failure resulted from administrative error;

(b) The failure involved only a *de minimis* percentage of intended recipients; and

(c) You resend the issuance to the intended recipient promptly after discovering the error.

### § 4000.32 Does the PBGC have discretion to waive any requirements under this part?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

## Subpart D—Computation of Time

### § 4000.41 What are these computation-of-time rules about?

The rules in this subpart D of part 4000 tell you how to compute time periods under our regulations (e.g., for filings with us and issuances to third parties) where the particular regulation calls for their application. (There are specific exceptions or modifications to these rules in § 4007.6 of this chapter (premium payments), § 4050.6(d)(3) of this chapter (payment of designated benefits for missing participants), and § 4062.10 of this chapter (employer liability payments). In some cases, the PBGC regulations tell you to comply with requirements that are found



somewhere other than in the PBGC's own regulations (e.g., requirements under the Internal Revenue Code (Title 26, USC)). In meeting those requirements, you should follow any applicable computation-of-time rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart E tells you how to maintain required records in electronic form.)

**§ 4000.42 What definitions do I need to know for these rules?**

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

*Business day* means a day other than a Saturday, Sunday, or Federal holiday.

*We* means the PBGC.

*You* means the person responsible, under our regulations, for the filing or issuance to which these rules apply.

**§ 4000.43 How do I compute a time period?**

(a) *In general.* If you are computing a time period to which this part applies, whether you are counting forwards or backwards, the day after (or before) the act, event, or default that begins the period is day one, the next day is day two, and so on. Count all days, including weekends and Federal holidays. However, if the last day you count is a weekend or Federal holiday, extend or shorten the period (whichever benefits you in complying with the time requirement) to the next regular business day. The examples in paragraph (d) of this section illustrate these rules.

(b) *When date is designated.* In some cases, our regulations designate a specific day as the end of a time period, such as "the last day" of a plan year or "the fifteenth day" of a calendar month. In these cases, you simply use the designated day, together with the weekend and holiday rule of paragraph (a) of this section.

(c) *When counting months.* If a time period is measured in months, first

identify the date (day, month, and year) of the act, event, or default that begins the period. The corresponding day of the following (or preceding) month is one month later (or earlier), and so on. For example, two months after July 15 is September 15. If the period ends on a weekend or Federal holiday, follow the weekend and holiday rule of paragraph (a) of this section. There are two special rules for determining what the corresponding day is when you start counting on a day that is at or near the end of a calendar month:

(1) *Special "last-day" rule.* If you start counting on the last day of a calendar month, the corresponding day of any calendar month is the last day of that calendar month. For example, a three-month period measured from November 30 ends (if counting forward) on the last day of February (the 28th or 29th) or (if counting backward) on the last day of August (the 31st).

(2) *Special February rule.* If you start counting on the 29th or 30th of a calendar month, the corresponding day of February is the last day of February. For example, a one-month period measured from January 29 ends on the last day of February (the 28th or 29th).

(d) *Examples—(1) Counting backwards.* Suppose you are required to file an advance notice of reportable event for a transaction that is effective December 31. Under our regulations, the notice is due at least 30 days before the effective date of the event. To determine your deadline, count December 30 as day 1, December 29 as day 2, December 28 as day 3, and so on. Therefore, December 1 is day 30. Assuming that day is not a weekend or holiday, your notice is timely if you file it on or before December 1.

(2) *Weekend or holiday rule.* Suppose you are filing a notice of intent to terminate. The notice must be issued at least 60 days and no more than 90 days before the proposed termination date. Suppose the 60th day before the proposed termination date is a Saturday. Your notice is timely if you issue it on the following Monday even though that is only 58 days before the proposed termination date. Similarly, if the 90th day before the proposed termination date is Wednesday, July 4 (a Federal

holiday), your notice is timely if you issue it on Tuesday, July 3, even though that is 91 days before the proposed termination date.

(3) *Counting months.* Suppose you are required to issue a Participant Notice two months after December 31. The deadline for the Participant Notice is the last day of February (the 28th or 29th). If the last day of February is a weekend or Federal holiday, your deadline is extended until the next day that is not a weekend or Federal holiday.

### Subpart E—Electronic Means of Record Retention

#### § 4000.51 What are these record retention rules about?

The rules in this subpart E of part 4000 tell you what methods you may use to meet any record retention requirement under our regulations if you choose to use electronic means. The rules for who must retain the records, how long the records must be maintained, and how records must be made available to us are contained in the specific part where the record retention requirement is found. (Subpart A tells you what filing methods you may use for filings with us and how we determine your filing date. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time.)

#### § 4000.52 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

*We* means the PBGC.

*You* means the person subject to the record retention requirement.

#### § 4000.53 May I use electronic media to satisfy PBGC's record retention requirements?

*General requirements.* You may use electronic media to satisfy the record maintenance and retention requirements of this chapter if:

(a) The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;

(b) The electronic records are maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily inspected or examined (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records);

(c) The electronic records are readily convertible into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(d) The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(e) Adequate records management practices are established and implemented (for example, following procedures for labeling of electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system including periodic checks of electronically maintained or retained records; and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system); and

(f) All electronic records exhibit a high degree of legibility and readability when displayed on a video display terminal or other method of electronic transmission and when reproduced in paper form. The term "legibility" means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize a

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group of letters or numerals as words or complete numbers.

### § 4000.54 May I dispose of original paper records if I keep electronic copies?

You may dispose of original paper records any time after they are transferred to an electronic recordkeeping system that complies with the requirements of this subpart, except such original records may not be discarded if the electronic record would not constitute a duplicate or substitute record under the terms of the plan and applicable federal or state law.

(Approved by the Office of Management and Budget under control number 1212-0059)

## PART 4001—TERMINOLOGY

Sec.

4001.1 Purpose and scope.

4001.2 Definitions.

4001.3 Trades or businesses under common control; controlled groups.

AUTHORITY: 29 U.S.C. 1301, 1302(b)(3).

SOURCE: 61 FR 34010, July 1, 1996, unless otherwise noted.

### § 4001.1 Purpose and scope.

This part contains definitions of certain terms used in this chapter and the regulations under which the PBGC makes various controlled group determinations.

### § 4001.2 Definitions.

For purposes of this chapter (unless otherwise indicated or required by the context):

*Affected party* means, with respect to a plan—

- (1) Each participant in the plan;
- (2) Each beneficiary of a deceased participant;
- (3) Each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA;
- (4) Each employee organization that currently represents any group of participants;
- (5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year

period preceding issuance of the notice of intent to terminate; and

- (6) The PBGC.

If an affected party has designated, in writing, a person to receive a notice on behalf of the affected party, any reference to the affected party (in connection with the notice) shall be construed to refer to such person.

*Annuity* means a series of periodic payments to a participant or surviving beneficiary for a fixed or contingent period.

*Basic-type benefit* means a benefit that is guaranteed under part 4022 of this chapter or that would be guaranteed if the guarantee limits in §§ 4022.22 through 4022.27 of this chapter did not apply.

*Benefit liabilities* means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

*Code* means the Internal Revenue Code of 1986, as amended.

*Complete withdrawal* means a complete withdrawal as described in section 4203 of ERISA.

*Contributing sponsor* means a person who is a contributing sponsor as defined in section 4001(a)(13) of ERISA.

*Controlled group* means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under § 4001.3 of this part. For purposes of determining the persons liable for contributions under section 412(c)(11)(B) of the Code or section 302(c)(11)(B) of ERISA, or for premiums under section 4007(e)(2) of ERISA, a controlled group also includes any group treated as a single employer under section 414 (m) or (o) of the Code. Any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

*Corporation* means the Pension Benefit Guaranty Corporation, except where the context demonstrates that a different meaning is intended.

*Defined benefit plan* means a plan described in section 3(35) of ERISA.

*Distress termination* means the voluntary termination of a single-employer plan in accordance with section